



The Fourteenth Amendment
Lesson #7

Grade Level: 9-12

Objective: To analyze the historical meaning of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution and how it is used today.

Ties to Arkansas Civics: (full year) 1.4., 1.5., 3.6., 4.1., 5.2., 5.3., 6.1.; (one semester) 1.4., 1.5., 3.1., 3.4., 4.1., 6.2.

Ties to American Government and Civics: NSS-C.9-12.1, NSS-C.9-12.2, NSS-C.9-12.5

“While the Union survived the Civil War, the Constitution did not. In its place arose a new, more promising basis for justice and equality, the Fourteenth Amendment.” —Justice Thurgood Marshall

A Historical Perspective:

Three major amendments to the U.S. Constitution were added at the end of the Civil War – the Thirteenth, Fourteenth, and Fifteenth Amendments – otherwise known as the Civil War Amendments (1868). The Thirteenth Amendment abolished slavery and the Fifteenth Amendment gave African American men the right to vote. However, the most relevant to the civil rights movement was the Fourteenth Amendment.

The Fourteenth Amendment was passed to stop state governments from unfairly discriminating against African Americans. It defined the legal status of African Americans who were once enslaved as citizens and promised “*equal protection under the law.*” This meant that there could not be any unreasonable discrimination for any minority groups in the U.S.

Today, the Fourteenth Amendment is the basis for claims of legal equality and expands the reach of the U.S. Constitution. It is cited more often than any other amendment in modern litigation.

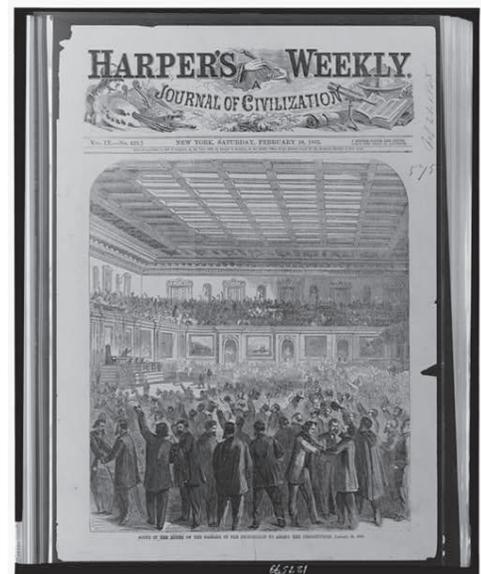


Photo: Scene in the House of Representatives on the passage of the proposition to amend the U.S. Constitution, January 31, 1865. Illustration in Harper's Weekly (volume 9, no. 425, 1865 Feb. 18). Courtesy of the Library of Congress.



The Fourteenth Amendment also gives citizens due process of law, or the right to be treated fairly by your federal, state, and local government. In the Fourteenth Amendment, it says, “no State shall deprive any person of life, liberty, or property without due process of law.” In other words, the government must treat you fairly whenever lawmakers create laws about your right to travel, raise a family, use your property, or receive government benefits for example. It also requires that all people employed by the government follow the law.

The words “equal protection of the laws” were added to the Constitution in 1868 by Republicans who had a vision that someday “the sons of slaves and the sons of slave owners would be able to sit down at the table of brotherhood.” The laws they passed, including the Civil Rights Act of 1866, promised freed slaves the right to vote and other rights but there were many forces working against them. They realized that it would take more than an act of Congress to accomplish their goals.

The Republicans proposed the 14th Amendment and then forced the southern states to approve the change to the Constitution as a condition for returning to the Union. Their primary intent was to address past harm — and to offer remedies for the many injustices inflicted on African Americans that were allowed under the Federal Constitution. When the words of the 14th Amendment were adopted they had limited effectiveness but their words created a constitutional basis for expanding the rights of individuals and minorities throughout our history.

Today, people are debate what the framers of the Fourteenth Amendment intended. Was the amendment designed to address the specific freedoms that southern states were denying freed slaves or was it a bigger vision about a strategy that all citizens can use to free society from discrimination? Regardless of their intent, through the years the words have been understood and used by many groups beyond those of the newly freed slaves.

Photo: Cartoon shows Congress as a man asleep in a hammock labeled “Law Enforcement.” A broken blunderbuss, labeled “14th Amendment, 2nd Section,” lies at his feet. A small black boy walks by holding a drum, but an elephant cautions, “Don’t wake him up!” The second section of the 14th Amendment provided for reducing a state’s apportionment in Congress if the state prevented any male from voting for any reason other than participation in a rebellion or other crime. There was agitation by various civil rights groups in the early years of the 20th Century to enforce it, but no serious attempts by the Republican-led Congress were made. Kemble was a prolific cartoonist and illustrator, best known for his portrayal of African Americans. Courtesy of the Library of Congress.

Let's take a look at some aspects of the Fourteenth Amendment...

Primer to the Fourteenth Amendment:

Section 1: All persons born or naturalized in the U.S. are citizens of this country and the state in which they reside (previously – states could decide!).

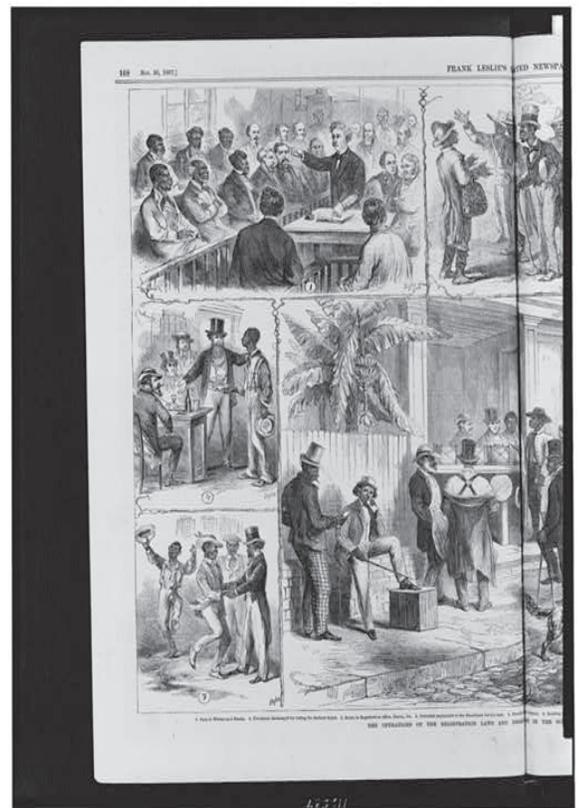
Section 2: African-Americans are counted as a person in legislative representation. Previously, slaves were counted as 3/5ths of a person. The word “male” is used in the Constitution for the first time in defining a voter in the U.S.

Section 3: Bars persons who had taken an oath of loyalty to the Confederacy from serving in the U.S. government (this was removed from the 14th Amendment by Congress in 1898).

Section 4: Acknowledges validity of Union debts incurred during the Civil War, but states that the U.S. will not claim any debts incurred by the former Confederate states. It also forbids any reimbursement to slave holders for the loss of slaves.

Section 5: Congress is given the authority to pass legislation to enforce this amendment to the U.S. Constitution.

Photo: The operations of the registration laws and Negro [suffr]age in the South / from sketches by James E. Taylor. Illustrations from Frank Leslie's Illustrated Newspaper (November 30, 1867, pp. 168-169). Photo courtesy of the Library of Congress. Eight scenes: 1. Jury of Whites and Blacks. 2. Freedman discharged for voting the Radical ticket. 3. Scene in Registration office, Macon, Georgia. 4. Potential arguments to the Freedman for his vote. 5. Freedmen ... New Orleans. 6. Reading the Government order of Rights and Privileges to the Freedmen. 7. Congratulating each other on the successful result of the election. 8. Discussing the merits of the candidates.



Let's take a look at several 14th Amendment that have benefited the U.S. citizenry...

Lochner v. New York (1905): The most famous case upholding property interests under the concept of substantive due process. While many states tried to regulate working conditions during the late 19th century to counteract the problem of industrialization, the U.S. Supreme Court decided that the New York law restricting bakers to 60-hour work weeks was unconstitutional because it violated their “liberty” to work. The court cited the economic policy of laissez faire or the opposition of government to regulate business. Also reference *United States v. Carolene Products Company (1938)*.



Slaughterhouse Cases (1873): Three suits challenging a Louisiana law that required the butchering of all animals in New Orleans to be done at the Crescent City Live-Stock Landing and Slaughtering Company. The original law coincides at a time when many states were trying to regulate health risks before modern refrigeration and insect control. Centralizing slaughterhouse operations was a way to regulate health risks. Those who owned the slaughterhouses were wealthy individuals who had political connections to get the Louisiana laws passed. Dissatisfied citizens challenged this system and said that it seriously inconvenienced butchers, many of whom were used to slaughtering animals on their own property. Louisiana butchers retained counsel, took their case to the Louisiana Supreme Court in 1870 (it was rejected), and then to the U.S. Supreme Court in 1873. They argued that under the “Privileges and Immunities Clause” of the 14th Amendment, citizens had a right to labor in their own facilities, which the Louisiana slaughterhouse laws violated.

Photos: President Warren G. Harding with Chief Justice Taft leaving the White House with justices (left to right): Louis D. Brandies, John H. Clarke, Mahlon Pitney, Willis Van Devanter, James C. McReynolds, William R. Day, Oliver Wendell Holmes, Joseph McKenna, William Howard Taft. Back: Atty. General Harry Daugherty, Solicitor General James Beck. Courtesy of the Library of Congress; U.S. Supreme Court Building, Washington, D.C., ca. 1960s. Courtesy of the Library of Congress.





Brown v. Board of Education of Topeka, Kansas (1954): After the end of World War II, the National Association for the Advancement of Colored People (NAACP) challenged the segregation of elementary and secondary schools in the U.S. The U.S. Supreme Court ruled that the separation of children by race was “inherently unequal,” and overturned the *Plessy v. Ferguson* decision of 1896 that declared racial segregation in the United States legal. In a separate decision a year later (known as *Brown II*), the U.S. Supreme Court held that school districts should begin desegregation with “all deliberate speed.” As a result of this decision, many states argued that education was a power reserved to them and Southern states organized resistance to the decision. One hundred and one members of the U.S. Congress signed the “Southern Manifesto” in

1956 to oppose the decision and in 1957, members of the 101st Airborne were sent to Little Rock, Arkansas to ensure that nine African American students could enter Central High School in the first important test of the *Brown* decision. It was not until 1969 that the U.S. Supreme Court ruled that schools must be desegregated “at once.”

Civil Rights Act of 1964: The U.S. Congress passed the Civil Rights Act of 1964 that prohibited discrimination in employment based on race, religion, or sex. The concept of affirmative action was enacted that required those who received government funding (ex: colleges) to take positive steps in training and employing groups who had been discriminated against in the past, such as minorities and women. Legal action on the basics of affirmative action is often argued in education cases when the equal protection clause has been violated in admissions policies (e.g., not admitting a certain percentage of minorities).

Yick Wo v. Hopkins (1886): The U.S. Supreme Court ruled that those persons living in America who were not natural-born citizens were protected by the 14th Amendment.

Roer v. Evans (1996): The U.S. Supreme Court struck down an amendment to the Colorado state constitution that forbade state and local governments from passing laws protecting lesbian and gay men from discrimination in housing, employment, and other areas. They ruled that no state could make any group “a stranger to its laws.”

Photo: Thurgood Marshall, lead lawyer in the Brown v. Board of Education case, ca. 1950s. He later served as the first African-American justice on the U.S. Supreme Court. Courtesy of the Library of Congress.

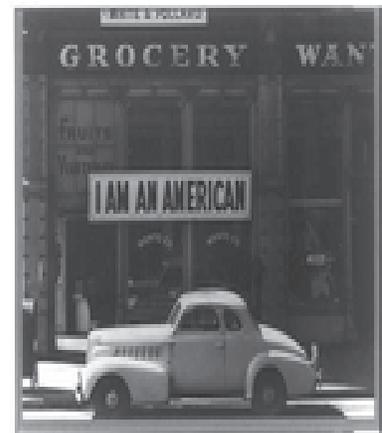
And when the 14th Amendment failed us...

Plessy v. Ferguson (1896): The U.S. Supreme Court declared that racial segregation in public facilities, if they were equal in quality, it did not violate the “Equal Protection Clause” under the 14th Amendment. This ruling upheld a Louisiana law that required separate railroad cars for whites and African Americans. While those arguing against these laws stated that it imposed a “badge of inferiority,” the U.S. Supreme Court disagreed in an 8 to 1 majority vote.

Internment of Japanese Americans: After Japan attacked Pearl Harbor in 1941, U.S. military officials forced Japanese Americans on the west coast to obey curfews and leave their homes. President Franklin Roosevelt issued Executive Order 9066 that authorized the internment of over 120,000 Japanese Americans in camps across the U.S. Two-thirds of those in the camps were natural-born U.S. citizens. In 1944, the treatment of Japanese Americans was challenged under the “Equal Protection Clause,” but the U.S. Supreme Court upheld the executive order saying that it was not based on racial animosity, but military security. It was not until 1988 that the U.S. apologized to Japanese Americans and compensated the survivors of the camps.



Photo: Segregated drinking fountains in the Dougherty County Courthouse at Albany, Georgia. Courtesy of the American Treasures of the Library of Congress; San Francisco, Calif., Mar. 1942. A large sign reading “I am an American” placed in the window of a store, at 13th and Franklin streets, on December 8, the day after Pearl Harbor. The store was closed following orders to persons of Japanese descent to evacuate from certain West Coast areas. The owner, a University of California graduate, was housed with hundreds of evacuees in War Relocation Authority centers for the duration of the war. Courtesy of the Library of Congress.



Suggested Classroom Activities:

Questions to Ask:

- 1) Discuss why the Fourteenth Amendment was added to the U.S. Constitution.
- 2) What does “equal protection under the law” mean?
- 3) Identify why the *Brown v. Board of Education* case was so important.
- 4) List examples of how people can work together to change unfair laws.
- 5) Why was the Civil Rights Act of 1964 so important?

- 6) Explain what due process means.
- 7) Why is the right to due process important?

* Divide the class into groups and learn how the following groups struggled to achieve equal protection under the law: Asian, Latinos, African Americans, Native Americans, people with disabilities, women, etc. Report to the class the group findings.

* Discuss the following scenarios:

You are suspected of a crime. They have used force to give them information to show you might be guilty. You must also appear in court and the judge listens to the evidence against you but does not allow you to present your story.

OR

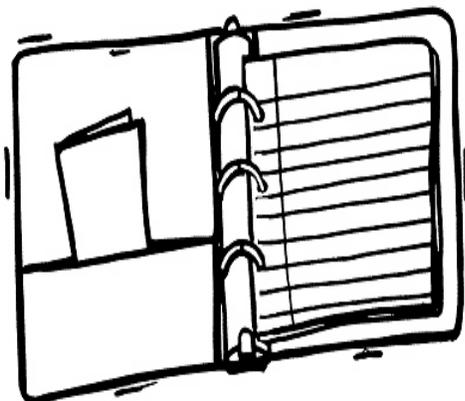
The leaders of your country make decisions about your life, liberty, and property. Suppose they make these decisions in secret and do not allow you or anyone else to participate.

Then, consider the following:

- Do you believe that you would be treated fairly if you were accused of a crime? Why or why not?
- Even if you have not broken the law or been arrested, would you want other people suspected of crimes treated in these ways? Why or why not?
- Would you want decisions that affected your life, liberty, or property made in secret? Why or why not?
- What might happen to people accused of crimes if there was no right to due process of law?

* Watch a television drama or movie that deals with law enforcement. Keep a journal of how due process rights are violated or protected. Share your observations with the class.

* With the help of your instructor, invite a law enforcement officer to your class. Host a discussion with the officer on how to protect due process rights. Prepare some questions prior to the visit.



* Find a current newspaper article that gives an example of due process and share with the class.

* Interview your school principal or school board member to identify your school's due process rules when dealing with students. Share your findings with the class.

Assess the following situations and find out how they would be treated under the Fourteenth Amendment:

1. After analyzing statistics on driving under the influence of alcohol and accident rates for drivers ages 18-21, a state allows females to drink alcohol at 18 but makes males wait until they are 21 years old.
2. The National Honor Society at a public high school tells an unmarried teenage girl that she was not selected for membership because she is pregnant.
3. A state university has more sports programs, and therefore scholarship money, for males than they do for females.
4. A state law requires that 20% of the contracts to build highways be awarded to minority-owned firms since that reflects the demographics of the state population.
5. A wealthy suburban community spends twice the amount per student to educate their children than does a poor one.
6. A state's ethnic intimidation law provides special punishment for hate crimes that are based on gender, race, ethnic origin, and disability.
7. State troopers are required to retire at age 50.
8. An immigrant family cannot apply for welfare benefits until they have lived in a state for two years.
9. A public school creates separate classes for girls and boys because they believe that the girls will do better in science and math if boys are not present.



Photos: Children in class, ca. mid 1900s. Courtesy of the Library of Congress.

Sources used for this lesson:

American Bar Association for Schools: http://www.abanet.org/publiced/lawday/schools/lessons/79_equal_historical.html; *The Oxford Guide to United States Supreme Court Decisions* (Oxford University Press, 1999), Kermit L. Hall, editor; *We the People: The Worlds We Live By... Your Annotated Guide to the Constitution* (Hyperion Press, 2003), Linda R. Monk.

For more information on the Little Rock Central High School National Historic Site, please contact 2125 Daisy L. Gatson Bates Drive, Little Rock, Arkansas 72201, (501) 374-1957, www.nps.gov/chsc.

